2357.

SUPREME COURT OF THE UNITED STATES.

No. 206.

SAMUEL VEAZIE AND LEVI YOUNG, PLAINTIFFS IN ERROR,

vs.

WYMAN B. S. MOOR.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE.

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Gideon, printer.

STATE OF MAINE,
Penobscot, ss.

At the supreme judicial court, begun and holden at Bangor, within and for the county of Penobscot, on the fourth Tuesday of June, (being the twenty-fourth day of said month, anno domini 1851.)

Present, the honorable Ether Shepley, chief justice; the honorable John S. Tenney, the honorable Samuel Wells, the honorable Joseph Howard, justices.

Wyman B. S. Moor, of Bangor, aforesaid, esquire, complaining, shows to your honors, that on the thirtieth day of July, A. D. 1846, the legislature of said State passed an act, entitled "An act to promote the improvement of the navigation of the Penobscot river," which act is in substance herein set forth, as follows, to wit:

Be it enacted by the senate and house of representatives in legislature assembled, as follows:

Section 1. William Moor and Daniel Moor, jr., their associates and assigns, are hereby authorized to improve the navigation of the Penobscot river, above Oldtown, and for this purpose are authorized to deepen the channel thereof; to cut down and remove any gravel or ledge, bars, rocks, or other obstructions in the bed thereof; to erect in the bed, upon the shore or bank of said river, suitable dams and locks, with booms, piers, abutments, breakwaters, and other erections to protect the same; to build upon the shore or bank of said river any canal or canals to connect the navigable parts of said river, or, (in case it should be deemed the preferable mode of improvement,) any railroad for the like purpose.

Section 2. They are authorized to take and hold so much land along the bank and shore of said river, or in the bed thereof, as may be necessary for location, construction, and repair of their aforesaid improvements, and to take and use the gravel, stone, and earth upon the land so taken; and the damages for the real estate so taken, when not agreed upon by the parties, shall be ascertained and determined by the county commissioners of Penobscot county, under the same limitations and restrictions as are by law provided in case of damages in laying out highways; and the damage for flowage created by any dam erected for the above specified purpose, shall be ascertained and determined in the same manner as is provided in the one hundred and twenty-sixth chapter of the revised statutes, for flowage created by mill-dams; provided, that no claim for damage shall be sustained unless made and prosecuted within two years from the time of the alleged injury.

Section 3. The above grant is upon the condition that the said William Moor and Daniel Moor, junior, their associates and assigns, shall within seven years from the date hereof improve the navigation of said river from Oldtown to Piscataquis falls, and from Piscataquis falls

to the foot of Five-island rips, and shall build and run over said route a steamboat, and shall within said seven years build a canal and lock round said falls, or a railroad to connect the route above with the route below said falls.

Section 4. If said William Moor and Daniel Moor, jr., their associates and assigns, shall perform the conditions of this grant, as contained in the last preceding section, the sole right of navigating said river by boats propelled by steam from said Oldtown, so far up as they shall render the same navigable, is hereby granted to them for the term of twenty years, from and after the completion of the improvement, as provided in the third section of this act; provided, however, that the said William Moor and Daniel Moor, junior, their associates and assigns, in the exercise of said right of navigation, or in the erection of works they may make to promote the same, shall not obstruct the running of any logs, rafts, or lumber down said river, which are usually driven or floated therein; and provided, also, that all boats not propelled by steam, which may be used for transportation on said river, shall be allowed to pass the locks and other improvements erected in pursuance of this act, by paying reasonable rates of toll, which may be fixed by the legislature after said improvements are completed, as provided in section third.

Section 5. The said William Moor and Daniel Moor, junior, their associates and assigns, are hereby created a body corporate, by the name of the Penobscot River Navigation Company, with the powers incident to corporations described and defined in the seventy-sixth chapter of the revised statutes, and common law, provided that they shall, at any time during the continuence of the above grant, elect by a majority in interest, and proceed to organize under and according to the provisions of said chapter of the revised statutes.

Now your orator says, that before the passage of said act said Penobscot river, between the termini named in said act, had never been navigated by boats propelled by steam, nor by any other boats for the transportation of merchandise and passengers, except by small scows, the batteaux of the lumbermen, and the birch canoe of the Penobscot Indians; nor was it deemed practicable for steam navigation; that your orator, andthe grantees named in said act, having examined said river, and the difficulties, and obstructions which impeded its navigation, and its rapid currents, entertained the opinion, that it could be made navigable for steamboats of peculiar construction and light draft, except in the draught, and when said river is closed with ice; that said river between Oldtown and Bangor, the head of navigation for sea-going vessels, a distance of twelve miles, is not navigable; that it is a succession of rapids, and obstructed by four dams erected entirely across it, and can never be navigated by vessels from the ocean; that there has been constructed at great expense, and is now in operation, a railroad from said Bangor to Old Town for the purpose of connecting the business of Oldtown and the country above with Bangor, said Bangor being at the head of tide-waters on said river; that the grantees named in

said act petitioned the legislature for the right to improve the navigation of said river above Oldtown, and for such protection from competition in the use of said river, and of their improvements, as the legislature in the event of success should deem just and reasonable, in consideration of the benefits to be derived by the community from the success of such an enterprise; that in aid of said petition most of the business men on said river united in petitions to the legislature; that the State is a large owner of the timber lands watered by the Penobscot river and its tributaries, the value of which would be greatly enhanced by the success of such an enterprise, by reducing the expense of transportation of supplies for lumbering operations, and by promoting the settlement of the public lands; and that the legislature acting upon the enlightened policy of aiding individual enterprise in introducing a new and improved mode of communication between distant parts of the State, the business of which was necessarily connected, thereby affording greater and improved facilities to the rapidly increasing business and trade of a large interior section, and upon full consideration of its importance to individuals, and to the State, and in view of the rights and equivalents therein granted, passed said act.

Now, your orator says, that by the provisions thereof the said grantees their associates and assigns, were vested with the sole and exclusive power and right, during the continuance of said grant, of making improvements in, and of making better the navigation of said river above Oldtown, by removing natural obstructions and by erecting such artificial works as might be deemed promotive of that end, and that without any provisions in said charter granting them an exclusive occupancy and enjoyment of their improvements, upon a just and equitable construction of said grant, they are entitled to the sole and exclusive use of their improvements, and of the river, for the purpose of running upon the same such boats as they had adapted to its navigation, and made it navigable by, not before used thereon, whilst performing the conditions of said grant. That in order to secure promptitude and efficiency in the prosecution of said enterprise by the third section of said act, the said grantees, their associates and assigns, are required to improve the navigation of said river between Oldtown and Piscataquis falls, and between Piscataquis falls and the foot of Five-island rips, and to build and run over the same a steamboat, within seven years from the date of said grant, and within said time to build a canal and lock around said Piscataquis falls, or a railroad to connect the route above with the route below said falls. That upon the performance of the requirements contained in said third section, as above recited, the legislature by said act vested in the said grantees, their associates and assigns, the sole and exclusive right of navigating said river above Oldtown, so far up the same as they should render the same navigable during the continuance of their grant, by boats propelled by steam, for the further term of twenty years, from and after the completion of said improvements, as provided for in said third section of said act.

And your orator further shows, that on the twenty-first day of February, A. D. 1847, he became an associate with said grantees, by an assignment to him in writing of a portion of the rights, privileges, and franchises contained in said act; and that William Cutter, of Bangor, also became an associate by a similar assignment from your orator. That your orator and his associates have made great improvements in the navigation of said river, both between Oldtown and Piscataquis falls, and between Piscataquis falls and Five-island rips; that they have removed from the bed and channel of said river large quantities of rocks; that they have blasted and removed from the same many cubic yards of ledge. That they have made at some points a channel, entirely new and different from the one used by rafts; that they have made it, at points, navigable where it was entirely impassable, except at a very high state of the water; that they have buoyed out the channel thus made; that there are now months in each season that said river is navigable for steamboats, at which times it would be entirely impassable had it remained without the improvements made by your orator and his associates. That said river is now made navigable by your orator and his associates from Oldtown and Piscataquis falls, and from Piscataquis falls to Five-island rips.

That your orator and his associates have built at great expense two steamboats, to run upon said river above Oldtown.

That they commenced running their said boat on the twenty-seventh day of May, A. D. 1847; they have run over the route between Old town and Piscataquis falls, the same steamboat, called the Gov. Neptune, daily with slight interruptions, except when the river has been closed with ice, since October, A. D. 1847.

That in the fall of 1847 they run said boat up to a place called Nickatou, a point more than fifteen miles above the fort of Five-island rips. That they have run over said route above Piscataquis falls regularly, except when the river was closed with ice, the steamboat called the Mattanawcook, since the twenty-second day of August, A. D. 1848; and that each of said boats are now running over their respective routes, each performing a trip up and down daily, conveying passengers and freight, making a continuous route up and down daily, between Oldtown and Five-island rips.

Your orator further shows, that on the fifteenth day of November, A. D. 1847, said William Moor and Daniel Moor, jr., conveyed and assigned to your orator all their remaining interest in and to said grant, and the rights, privileges, and franchises therein granted, and the steamboats and improvements constructed and made under and by virtue of the same; and that on the twenty-eighth day of February, A. D. 1849, the said William Cutter conveyed and assigned to your orator all his interest in and to the same property, grant, franchise, and privileges; and that since said assignment last named your orator has been, and now is, the sole owner of all the rights, privileges, and franchises granted by the act aforesaid to said William Moor and Daniel Moor,

jr., their associates and assigns, and of the steamboats and improvements constructed and made under and by virtue of the same.

And your orator further showeth, that since he has been sole owner of said franchise, charter, and property and improvemeuts, he has built a railroad of near two miles in extent around said Piscataquis falls, commencing at the landing of the steamboat below said falls and extending to the landing of the steamboat above said falls; and that he has connected the route above said falls with the route below said falls by said railroad, that being deemed the preferable mode of connecting said routes. That said railroad is well and substantially built, and sufficient for all the purposes of transportation on said river by said falls. And your orator further says, that he has well and faithfully performed all of the conditions of the aforesaid grant; that he has made great improvements in the navigation of said river, between the points named in said charter, and that he has rendered the same navigable for steamboats safely and conveniently for a long period in each year, during which time it could not be navigated in its natural state; that he has built and run over said route a steamboat, and is now running over each of said routes a steamboat daily. That he has connected the route above said Piscataquis falls with the route below said falls, by a railroad, which is in constant and successful operation for the purpose of connecting said routes; and that he has done and performed all which by said charter and grant the said grantees, their associates and assigns, were bound to do and perform.

That in the period of less than three years from the passage of said act he has done and performed all that the legislature desired when they passed said act, and to accomplish which they gave by said grant the period of seven years, viz., the establishment of a new and improved mode of communication by steamboats, and a railroad for the distance of nearly fifty miles into the interior of the State, liable only to be interrupted by physical causes which are beyond human control, viz., ice and droughts, which sometimes have occurred, and may hereafter occur, on said river.

That in performing the conditions of said grant, and in purchasing the interests of his associates, he has expended about twenty thousand dollars, and devoted a large portion of his time for the last three years to the execution of the trust and duties conferred by said grant. That he has received but a small remuneration thus far for the expenditures thus made. Now, your orator says, that said grant is a contract between him and the State, performed and executed on his part, and that by said contract he is entitled to have and enjoy the sole and exclusive right of navigating said river by boats propelled by steam from Oldtown to the foot of Five-island rips, and as far above said rips as he and his associates have rendered, or hereafter during the continuance of said grant may render, the same navigable for the full term of twenty years from and after the completion of the improvements specified in the third section of said act, which improvements are now completed, and for some time past have been completed.

And your orator further complaining shows, that one Samuel Veazie, of Bangor, and Levi Young and Warren R. Young, of Oldtown, traders, in defiance of the authority of the legislature, and in disregard of the rights of your orator, and in contravention of the grant and contract made by the State to and with the said William Moor and Daniel Moor, jr., their associates and assigns, and by them assigned to your orator as aforesaid, and in open and manifest violation of the exclusive right and privilege vested in your orator as aforesaid, to navigate said Penobscot river by boats propelled by steam from said Oldtown to the foot of Five-island rips, and as far up as they should render the same navigable, without any license from your orator, or any legal right whatever, have built and set in motion on the waters of said river, between said Oldtown and Piscataquis falls, a certain boat propelled by steam called the Governor Dana, and that since the tenth day of May, A. D. 1849, they have run said boat, propelled by steam, over said route, a distance of about twenty-five miles, and constantly employed said boat against the will of your orator in transporting passengers and merchandise for hire from said Oldtown to said Piscataquis falls, and of receiving and appropriating to their own use the emoluments accruing from such unlawful use and employment of said boat, called the Governor Dana.

That in running said boat on said route they have used and employed the channel and improvements made by your orator, and that without the improvements made as aforesaid by your orator, for a large portion of the time during which said boat Governor Dana has been run over said route, said river would not have been navigable by said boat but for the improvements made by your orator, and those formerly associated with him as aforesaid, under and by virtue of said grant.

And your orator further shows, that said Samuel Veazie, and said Levi Young and Warren R. Young, openly and publicly avow their intention to continue to run said boat Governor Dana over said route, and to run said boat over the route between Piscataquis falls and the foot of Five-island rips; and they also openly and publicly avow their intention of building another boat to be propelled by steam, and to be run over the waters of said river between said Oldtown and the foot of Five-island rips.

And your orator complaining further shows, that since he has become sole owner of said said franchise, he has completed the construction of five dams near the head of said Piscataquis falls; that said dams were erected and constructed under the powers conferred under said act to build dams and other works to improve the navigation of said river; that he built them with the view and purpose of bringing his boats nearer together, and of diminishing the length of the land carriage by railroad around said Piscataquis falls; that said dams do not, nor do any of his works, made under and by virtue of said act, impede or obstruct the running of any logs, rafts, or lumber, down said river, which are usually driven or floated therein, but they greatly facilitate the passage of the same; that four of said dams are built upon

your orator's own land, and that the other is built upon land upon the west side of said river, which your orator was informed belonged to said Veazie, and which he has reason to believe was purchased by said Veazie for the purpose of preventing the construction of said dams, and of defeating the object of the legislature and of your orator in improving the navigation of said river; that your orator, before the construction of this last named dam, to wit, on the first day of March, A. D. 1849, by virtue of the act aforesaid, and by the powers therein granted, took a strip of land on the shore and bank of said river of thirteen rods and fourteen feet in length up and down said river, and of the width of about one rod above high water mark, extending to the thread of the river, for the location, construction, maintenance, and repair of said dam, which extent of territory was necessary for that purpose, and that he recorded in the registry of deeds for said county the taking of said land, and the purpose for which the same was taken, and that the dam aforesaid last named is built and constructed upon the strip of land so taken. Now your orator says, that the dam aforesaid, built upon the west side of said river upon the land so taken, the said Samuel Veazie has openly threatened to destroy and take away; and that on the twentieth day of May instant, the said Samuel Veazie and the said Levi Young and Warren R. Young, at the head of a large gang of men, went up to said dam with the necessary tools and implements to remove and destroy said dam, and were only prevented from doing it by the quantity of water upon said dam, which rendered it impossible for them to remove it, and that they now avow publicly and openly an intention of removing and destroying said dam when the water shall subside, so that they can remove and destroy it. Now your orator further shows, that before the building of the steamboat Governor Dana, he notified said Samuel Veazie that he and his then associate were making improvements on said river under and by virtue of said act, and that they claimed to have and enjoy the sole and exclusive right of navigating the same by boats propelled by steam; and that the said Levi Young and Warren R. Young well knew the same, having been employed by your orator to work in improving said river, and having run on said river the boats of your orator.

Now your orator further says, that the avowed object and purpose of the said Samuel Veazie and Levi Young and Warren R. Young is to divert the travel of passengers and transporting of goods from the boats of your orator, which has operated and is now operating to the great injury and disadvantage of your orator, and to his irreparable loss and detriment, and in derogation of the lawfully vested and exclusive rights of your orator as aforesaid, and so far as his rights and interests are concerned is and will continue to be a great injury and a nuisance; and that the said Samuel Veazie, and Levi Young and Warren R. Young, by their threats and acts, intend and mean to prevent your orator from making and completing further improvements in the navigation of said river, by the unlawful removal and destruction of his dam as aforesaid; and forasmuch as your orator has not a plain, ade-

quate, and complete remedy at law, and can obtain adequate relief only in this court sitting as a court of equity, where matters of this description are more properly cognizable and relievable, and inasmuch as your orator has no mode of inquiring into and ascertaining and preventing said nuisance, detriment, and injury, already commenced, and threatened to be followed up and pursued against his exclusive rights, and to the destruction of his aforesaid property, but by the aid of this court sitting as a court of equity:

Wherefore your orator prays that your honors would issue your writ of summons to the said Samuel Veazie, Levi Young and Warren R. Young, that they may all be made parties to this bill; that an account may be taken, under the direction of this court, of all sums of money which have come or may come to the hands of the said Samuel Veazie, Levi Young and Warren R. Young, or either of them, or of any other person for their use, or for the use and benefit of either of them, as the price or consideration of transporting passengers, or merchandise, as aforesaid, in derogation of the right of your orator; that they may severally be required to make true and perfect answers on oath to all the matters and things charged in this bill and complaint, and that they and their servants and agents may forthwith be absolutely enjoined, restrained, and prohibited by a decree of this court, from running and employing said steamboat Governor Dana, propelled by steam as aforesaid, for transporting passengers or merchandise on said river, or any part thereof, above said Oldtown, and also from building, using, and employing any other boat propelled by steam on that part of said river for that purpose, without the consent of your orator, obtained according to law, until his said interest and exclusive right shall terminate and expire.

And that the said Samuel Veazie and Levi Young and Warren R. Young, and their servants and agents, may forthwith be absolutely enjoined, restrained, and prohibited by a decree of this court from destroying, removing, or in any way injuring the dam or dams of your orator built and constructed as aforesaid on Piscataquis falls, and that your orator may have such other and further relief in the premises as the nature of the case may require.

WYMAN B. S. MOOR.

PENOBSCOT, *ss.*

May 29th, A. D. 1849.

This day personally appeared the above named Wyman B. S. Moor, and made solemn oath that he had carefully read the aforesaid bill of complaint by him signed; that he knew the contents thereof; that the statements therein contained were true, of his own knowledge, except the matters stated on information or belief, and as to those matters, that he verily believed them to be true. Before me,

DAVID McCRILLIS,
Justice of the peace.

This bill was entered and filed, and subpœna issued May 31, 1849.

June term, 1849.

Injunction granted. Time enlarged to file answer to 90 days; and said action was thence continued to the October term, 1849.

October 3d, 1849.

Answer of Veazie and Levi Young filed; and it is agreed, that the answer of the two defendants who have answered, be taken for the answer of all the defendants.

The answer of Samuel Veazie and Levi Young to the bill of complaint of Wyman B. S. Moor.

STATE OF MAINE, *Penobscot, ss.*

In chancery. S. J. Court.

WYMAN B. S. MOOR
vs.
SAMUEL VEAZIE, Levi Young, and Warren R. Young.

These defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereunto say, that the legislature of Maine passed an act of which, as they believe, a copy is set forth in the said bill of complaint; and that it may be, that the said complainant is assignee of the grantees in said act, as set forth in said bill of complaint, and that they admit that the said Penobscot river, between the termini mentioned in said bill of complaint, had never been navigated by boats propelled by steam, before the passage of said act.

But these defendants say that the Pebnobscot river, for the last fifty years, in a natural state, between, above, and below said termini, from above Five-island rips, continuously to Oldtown falls, has been navigable for steamboats of the size, structure, and class of those of the said complaint, and of the said Veazie, referred to in said bill of complaint, both up and down said river, and has during that time been navigated as aforesaid by boats laden with merchandise, goods, and passengers of as a great a draught of water as is required for the convenient navigation of the aforesaid steamboats, and requiring in all respects as good a channel and as favorable a current; that boats of the aforesaid description were employed, among others, by the agents of the Government of the United States, one or two years, during the period aforesaid, for the transportation of the troops of the United States and their baggage up said river, from Oldtown to said Five-island rips and above the same, and that said river has been navigated by rafts of logs, timber, boards, and other manufactured lumber during said term of time, generally of draughts as great as those of the aforesaid steamboats, and frequently greater, and always requiring a straighter, wider, and better channel, by reason of the greater difficulty of managing the same, from

above the upper terminus aforesaid, to the tide water at Bangor; and that the amount of goods so transported by boats up the river, and of the lumber navigated over the same, during said time, has annually amounted, in value to hundreds of thousands of dollars, and during the few years last past, to millions, as they are informed and believe.

And these defendants further say, that the complainant and his grantors navigated the said Penobscot river, with their said steamboat, called the Gov. Neptune, in the spring and summer of 1847, and until the extreme drought of that summer, between Oldtown falls and Piscataquis falls, a distance of about twenty-five miles, and over the most difficult part of said river for steamboat navigation within the limits of the said charter, before any sum had been expended, or any labor done in improving the navigation of the same; and that under like circumstances with all parts of said river in its natural state, the said complainant navigated his said steamboat, deeply laden with passengers, up and down, over said Piscataquis falls, and over the remaining part of said river, and fifteen miles above the said Five-island rips to a place called Nickatou on said river; and thereafter, during the season of 1848, both of the said complainants' steamboats were navigated over said Piscataquis falls in their natural state; and the said boat, Gov. Neptune, frequently and deeply laden with freight and passengers, and the said boat Mattanawcook was navigated over that part of the Penobscot river between said Piscataquis falls and Five-island rips under the like circumstances during the season of 1848, with that part of said river in a natural state.

And these defendants say, that the Penobscot river, since their acquaintance with it, and, as they believe, since it commenced to flow, has been navigable for such a class of steamboats as those referred to in said bill of complaint over the entire distance covered by said charter at all seasons of the year, except when closed by ice and in extreme droughts. And these defendants further say, that up to the time of filing said complaint the entire sum expended by the complainant and his grantors, between Oldtown and Piscataquis falls, and said falls and Five-island rips, upon the Penobscot river, or in attempting to improve the navigation of the same, a distance of about fifty miles, was less than one thousand dollars, and as they are informed and believe did not exceed five cents a rod upon an average of the distance; and that the principal part of this amount was expended below said Piscataquis falls in removing some loose stone from one part of said river to another part, (frequently depositing them in the regular raft channel,) for the purpose principally of accommodating the complainant's said steamboat in receiving passengers, freight, and fuel from the eastern shore; while in other parts of the said river (which river is generally about one hundred rods wide) there was a straighter and better channel for steamboats and rafts than in the route generally pursued by said complainant's boats; and that the difference in the depth of the water in the said route of said complainant's boats and other parts of the said river at the same points, in the shoalest places in the channels respect-

ively, at the time of filing this said bill of complaint, was no more than about four inches; and that the rise and fall of the water in the part of the river aforesaid, during the months when the same is navigable, is frequently from six to ten inches in twenty-four hours, according as the water is withheld or let out from the lakes, near where the said river takes its rise. And these defendants say, that in no more than one place upon said river is it known to them that any ledge has been removed by said complainant or his grantors, and in that case only at a small expense, and not for the purpose of extending the time of the navigation of said river in the dry season, but for the purpose of making a more convenient passage for the complainant's boat, at a high state of water, when all other parts of said river are navigable. And they aver that in no respect has the complainant or his grantors materially improved the navigation of said river from said Oldtown to Piscataquis falls, and from said falls to Five island rips, for steamboats, as is alleged in said bill of complaint, nor extended the period during which the same may be navigated by said boats; and that for the navigation of rafts the said complainant has materially injured the same, and that by means of his dams at said Piscataquis falls, he has cut off boat navigation up said river by said dams.

And these defendants further say, that the tide flows in the Penobscot river to within eight miles of Piscataquis falls, and that between the head of the tide and said falls there are only three sets of rips in said river of any importance, and that said Oldtown falls and said rips between them and the head of the tide in Bangor, have always been navigable and navigated since the first settlement of this country; and that for a great number of years, and until other modes of conveyance had become more convenient and less expensive, boats of as great a draught as the steamboats referred to in said bill of complaint, as these defendants are informed and believe, were employed to convey goods, merchandise, and passengers annually up said river, running up from the said head of the tide over all the said rips and falls, so called; and that this part of the river, as well as that above said Oldtown, was for many years within the last half century the only public highway in this part of the country for the people of Maine and Massachusetts, and the other States, and was and is used to a considerable extent by those of the British provinces and the Indians on both sides of the line. And they further say, that at this time the riparian proprietors are using the water upon said falls and rips for manufacturing purposes, but that the channel of said river to Bangor is kept open for the purposes of navigation, and that property of the value of more than a million of dollars is annually navigated over this part of said river from above said Oldtown to Bangor in rafts and boats. And these defendants further say, that the aforesaid part of the Penobscot river, when not closed by ice, is and always has been, as they believe, when not affected by extreme droughts, navigable in a state of nature for such steamboats as the said complainants' and said Veazie's, referred to in said bill of complaint; and that said steamboats can navigate safely any part of the

said Penobscot river, in any state of the water, when the same can be or could be navigated by boats of a like draught, propelled by any known power. And they further say that the Penobscot river, from above Oldtown falls to Bangor, for a small sum, (for less than the profits of the business upon it will justify, in connexion with the free navigation of said river above Oldtown,) can be put into a state navigable the year through for the aforesaid class of steamboats, except when the same may be closed by ice; and that the dams of said riparian proprietors, upon said part of said river, are so constructed as to aid in flowing out the said rips, and to cause no serious impediment to such improved state of navigation, as in fact they cause little, if any, to the present state of navigation in passing said dams; and this latter fact, these defendants aver, has been frequently settled, by the trials for the purpose of testing that question, before the courts and juries of this country.

And these defendants further say that the State of Massachusetts, as well as the people thereof, as individuals, and of the other States of the Union and of the British provinces, are now, and have been for a great number of years, largely interested in the commerce and navigation upon the entire Penobscot river, as well the distance above Bangor for one hundred miles, as between Bangor and the ocean; that this distance of one hundred and sixty miles has been the great channel of commerce and navigation in this section of the country, to the amount of millions annually during that period, and is, and has been for said period, the grand and continuous highway from the ocean to the interior, and from thence to the ocean.

And said Samuel Veazie says that he came upon the Penobscot river in the year A. D. 1826, and that since that time he has been largely interested in the business upon the same; that at the time of building his said steamboat he was, and still is, largely interested in the free navigation of said river, and was, and still is, the owner of twenty-five miles or more of the shore of the said Penobscot river, fifty thousand acres of timber lands, and forty to fifty saws and other manufacturing establishments, and other large interests connected therewith upon the same; and that he built and run his boat aforesaid upon said river, under the authority of the Government of the United States, and by virtue of a license therefor, duly obtained of said Government according to law, a copy of which is hereunto annexed, and marked A; and that he used the same in forwarding his own business and those of the citizens of the United States, British subjects, and the Indians of the Penobscot tribe entrusted to his care; and that many of said persons and himself were engaged in carrying on their commerce upon said river above and below the tide-waters, and from thence to other ports in other States in the Union. And the said Veazie insists upon his right so to do by virtue of the constitution, laws, and treaties of the United States, and his authority derived therefrom, as well as by the laws of natural right. And he says that the said Youngs were men in his employ, acting under his authority, commanding his said steam-

boats, and had no other interest in the transaction; and the said Youngs say that the same is correct, so far as they have knowledge.

And these defendants say, that the reason that steamboats were not sooner used upon the Penobscot river above the tide waters, was not because the river was not navigable for such steamboats as those referred to in said bill of complaint, for seventy to eighty miles above Bangor, but because this peculiarly constructed class and size of boats had not been generally known in this section of the country, and the practicability of navigating rivers above tide waters, where the currents were in places quick and the descent considerable, was not well understood; and it is only within the few last years that such rivers have been demonstrated by the test of experience to be navigable by steam and steamboats as well as where the tide ebbs and flows, and where the flow of the current is more gentle; and that between Bangor and Oldtown a railroad had for the last fifteen years rendered such navigation less necessary over that part of said river.

But these defendants further say, that this complainant and the grantees in said act were well acquainted with the aforesaid class of said steamboats and their power to navigate such rivers, and that they well knew that the Penobscot river was navigable for such steamboats the entire distance within the limits of their said charter, in a natural state when they obtained said charter, as these defendants believe, and that they had employed, with success, prior to that time, steamboats of a similar size and construction upon the Kennebec river above tide waters, another river in said State of Maine, where the river, the means and the facilities for such navigation, were no more favorable than upon the aforesaid part of the Penobscot river.

And these defendants further say, that the annexed paper marked B is a copy of the only petition, that of the said grantees excepted, known to them to have been signed by any person or presented to the said legislature in favor of the said grant, and that the prayer of these petitioners is that the grant of the exclusive right should be limited to the works of the said grantees; and that the remainder of the river should be left open to the public use; and they further say, that they refrain from setting forth the manner by which said grant was obtained by said grantees, and this complainant co-operating with them, because they do not understand that it would be pertinent to the issue involved in this proceeding.

And the said defendants further say, that that part of the said Penobscot river covered by the said complainants' said charter is above the ebb and flow of the tide; and the said Veazie says that he was, at the time of the filing of said bill of complaint, the owner of about eleven miles of the shore of the Penobscot river, at and above and below the said falls of Piscataquis, and within the termini of said charter, and that he was owner of *of* the principal part of the same at the time of the passage of said act; and that he owns said land and said water flowing in front of the bank, and over the bed of said river, to the thread of said river; and that the same is and was subject to no other incumbrance

than the right of the public to pass over the same in common with himself as the owner thereof; and said Veazie insists upon his exclusive right to use said bank of said river, said land under the said river, and the water flowing therein, in any manner most for his interest, so far as he does not impede or injure the passage over the same for the public; and he denies that the State has power to authorize any individual to exclude him from the use of his own land and water, his free passage over the same in any state of the water, in any manner, or by any conveyance by land or by water he may choose to adopt, unless the same be taken from him by due course of law, or for public purposes, securing to him a "just compensation." And said Veazie avers that said act excludes him from the free use and enjoyment of his own land and water, for a distance of eleven miles, within the termini of the said complainants' charter, and confers upon the said complainant the exclusive right to use said Veazie's said land and water in one of the modes most profitable to said Veazie as an owner thereof, and deprives him of the most valuable part of the said property without providing for said Veazie any mode or amount of compensation therefor. And said Veazie avers that said act in this respect violates the constitution of the United States and of this State.

And these defendants further say, that the States of Maine and Massachusetts were once the sole owners of all the lands bounded upon the said river, each side of the same, extending from said Oldtown to Five-island rips; that said States conveyed the title to all of the said lands to the thread of the river, for an adequate consideration, and without making any reservation, except of the islands situated therein, for the use and benefit of the Indians, called the Penobscot tribe; that all of said lands are now owned by individuals, citizens of the different States of the Union; that said lands have passed from individual to individual for many years, and that the said States and these several grantors have received a large consideration from their several grantees, for the exclusive right of each grantor and riparian proprietor to the land and water in front of their respective lots "usque ad filum," subject only to the public right of passage over the same in common with said proprietors as owners thereof; that said owners have always claimed and used as they believe this exclusive right, except as aforesaid, and the banks, shores, and waters in front of their several lots, and the land under said waters, and that said shores, waters, and lands under said water, to the middle of said river, are in all parts of said river within the termini of said charter very valuable, and in many parts of more value than all the remaining part of their respective lots; and that the principal value of said shore, waters, and lands under the same to the thread of said river to the riparian proprietors consists in their unrestricted right to the free use and free navigation of their own waters, in such manner as the business and commerce upon said river requires, and that the exclusion of them from their right to run their boats or rafts moved by steam, by wind, by oars, or by poles over the same, or from one part of their said land to another part in said

river will greatly diminish the value of their said lands and water, and their rights as riparian proprietors granted to them by said State, prior to the grant of said act to said complainant's grantors. And these defendants insist that said act in this respect transfers from the said riparian proprietors private property to an individual without making or providing a "just compensation" therefor, and in violation of the Constitution of the United States, and of this State.

And these defendants further say, that the said grant to said complainant is not a grant for "public uses" because it excludes the whole people from rights secured to them before the passage of said act, to wit, the free navigation of said river for all purposes and in all modes, and converts the public right of passage upon said river into an individual right of way; because the said charter does not require the said complainant to accommodate the public travel or transportation upon said river at any price, but permits him to prohibit a part or all of the people from travelling upon said river by the use of steam, and to exclude them from the use of his own steamboats during the existence of the said charter; because it imposes upon said grantees of said act no duties; requires no public service; creates no liability; secures no public facilities, and gives the people no rights.

And these defendants further say, that most of the timber growing upon the timber lands of the States of Maine and Massachusetts, and of individual proprietors thereof, situated in said State of Maine, must be floated to market over this part of the Penobscot river, in logs or in a manufactured state; and that said steamboat constituted one of the best means of conveying a large portion of the manufactured lumber down said river, and of conveying the goods and merchandise of the operators up the same; and that the principal source of business upon said river consists in said lumber operations. They therefore say, that in respect to this class of business, it converts public into private rights, and excludes from competition with said grantees all who do not purchase of them the right to do business upon said river, and to transport their lumber to market.

These defendants therefore insist that said grant is an act to convert "public uses" and public rights into private uses and private rights; and that for such purposes, under the provisions of this act, the said grantees have no right to seize and to hold the said Veazie's said land at the said falls of Piscataquis, as referred to in said bill of complaint; and they insist upon the right of the said Veazie to remove the said dam erected there by said complainant; and they aver that the same is built wholly upon the land of said Veazie, and that it entirely obstructs the only steamboat channel by said falls; and that said channel is wholly upon the land of said Veazie, over and through the entire distance of said falls; and that in this respect said act is in violation of the Constitution of the United States, and of this State.

And these said defendants further say, that the said complainant and his grantors are not, and never have been, a corporation, sole or aggregate; that they have never elected to organize as such under the

provisions of the said charter, and that said complainant claims to be exempt from any law which controls and regulates corporations, public or private, in said State; and that said complainant has seized and holds the said Veazie's said land, at said falls of Piscataquis, referred to in said bill of complaint, acting in his individual capacity; and that he claims to hold the same in his individual right, and for his private benefit, and not as a corporation. And these defendants deny the right of the legislature to authorize an individual to seize and hold the lands of another individual for his own private benefit, gain, and use, against the consent of the latter. And these defendants aver that said land is not within the termini mentioned in the grant to said complainant's grantors, but lies between the foot and the head of said Piscataquis falls, being that part of the said river where the said charter does not require the said complainant to improve the navigation thereof, but around which it requires him to construct a railroad or a canal.

And the said defendants further say, that the said complainant has taken exclusive possession of the said land of said Veazie at said Piscataquis falls, and placed his said dam upon the same, and excluded said Veazie from his possession thereof, which he held prior to the said taking by said complainant, before said complainant had paid, or offered to pay, any sum for the same.

And said defendants further say, that by the process prescribed in said act for ascertaining the value thereof, the lapse of one year at least is required, and a considerable expenditure of money and services on the part of said Veazie; and at the termination of said process, said Veazie will have no lien upon his said land for security, but only a judgment against an individual for the value of his lands and lots, who may or who may not have means and a disposition to satisfy the same. Now, said Veazie insists that the right to such a process and such a judgment, upon condition of such an expenditure and such a credit is not the "just compensation" guarantied to private rights by the 5th article of the amendments to the Constitution of the United States, and that he cannot be dispossessed of said lands, and excluded therefrom, before he shall have been tendered or paid a "just compensation" therefor in the current coin of the United States; and that until said tender or payment, an appropriation of said Veazie's said land by said complainant is a trespass upon the rights of said Veazie.

These defendants admit that they have run their steamboat, called the Gov. Dana, generally upon the eastern shore, and nearly over the route pursued by the steamboat called the Gov. Neptune; and they say it was for the reason that they obtained nearly all their passengers, freight, and fuel from that shore of the river, the western shore of the same being generally without many inhabitants. And they further admit, that said complainant has constructed a wooden track from the navigable waters above said Piscataquis falls to the navigable waters below the same, upon the eastern shore of the said river; but they say that it is of a temporary caaracter, and that a considerable portion of

it is liable to be carried off annually by the ice and freshet, and that it gives but little accommodation or security to those who go upon it; and that the said track cost, as they believe, not exceeding fifteen hundred dollars. And they further admit that there is, and has been for twelve to fifteen years, a railroad from Bangor to Oldtown; and they say that it takes off much of the transportation which was formerly forwarded up the Penobscot river.

And these defendants further admit, that upon the Piscataquis falls this complainant, in the months of March and April, 1849, constructed five dams; and they say that these five dams obstruct all the boat, scow, and batteaux channels up over said falls; and that it may be that four of them are built upon the land of this complainant, and that they are upon the eastern shore of said river. But these defendants say that neither of these dams, nor the remaining one upon the western shore, built upon said Veazie's land, have any manner of connexion with the operations of the said complainant upon said river, or with the navigation of his said boats, or with the operations of his said railroad, or wooden track, round said falls, or with any other matter or thing connected with said complainant's said charter, or with his operations or works under the same, according to their knowledge and belief; and they say that these dams are of no further use to said complainant than to stop up the natural channels of said river, which have existed for rafts, boats, scows, batteaux, and canoes, up to the time of the erection of said dams over said falls, and through which principal passage upon said western shore this complainant navigated his said steamboats up and down said falls in the years 1847 and 1848, the said falls and channel then being in a natural state; and thereby to prevent any transportation of goods or passengers up said river, except what may pass up in this complainant's said boats, and over his said railroad. And these defendants admit, that this complainant, by thus compelling all the public travel and transportation to go upon his boats and road, may and does increase his receipts; but they deny his right thus unnecessarily to obstruct the Penobscot river.

And these defendants further say, that the complainant built his said fifth dam upon the western shore, and upon said Veazie's said land, for the manifest purpose of arresting the passage of said Veazie's said steamboat up and down said river, over that part of said river, and for no purpose connected with his own operations. And they say that said dam did arrest the passage of said Veazie's boat thereafter over said falls, and that but for said dam this part of said river could have been navigated by said steamboats, while the other parts of said river between the termini of said charter remained navigable. And said defendants say that said complainant placed said dam in the natural raft and boat channel of said river at this place, and extended the same from the shore so far across the same that no boat of any description, or propelled by any power, could or can pass there; and they say that this dam is wholly unnecessary for any of said complainants' works or

operations under his said charter, and serves no other purpose than to arrest every class and species of boats navigating up said river.

And said Veazie admits that it was his intention to have removed said dam, and to have run his said steamboat this season to said Nick atou, so called, about fifteen miles above Five-island rips, and to have immediately built one or more steamboats of a similar description; and to have expended money enough upon the Penobscot river to have secured a good steamboat channel from said Oldtown to said Nickatou, a distance of about sixty-miles; and to have run his said boats over the same daily during the season, except when the river should be closed by ice; and after that to have put the channel of the said river from said Oldtown to Bangor in the same condition for daily steamboat navigation over the same; and then to have run his steamboats daily each way during the year, the winter excepted, and to have reduced the price of passage and transportation up and down the same to a just compensation; and thereby to have given such facilities to the public as they have never had upon the Penobscot river for their business and their commerce, and at prices which would have saved to them hundreds of thousands of dollars, as he believes, during the years which said act has to run, if valid; and said Veazie says that nothing has prevented him from making the aforesaid public improvements, trusting to the business and commerce upon said river for his remuneration, but the injunction granted by this honorable court upon the prayer of the said complainant; and that he intends yet to execute the above purposes, should his right to do so be established by the proper tribunals of the country. And the said Youngs admit, that it was their intention and expectation, in the aforesaid operations last referred to, to have been engaged by, and acted for, said Veazie, and in his employ.

And these defendants further answering deny that the said complainant or his grantors have complied with the conditions of said act; and they deny that any exclusive right to navigate the Penobscot river above Oldtown is granted to the complainant or his grantors, except upon a condition; and they insist that this condition is a condition precedent; and that, in the language of said act, it is to "improve the navigation of said river from Oldtown to Piscataquis falls, and from said Piscataquis falls to Five-island rips, &c.," and to "render the river navigable;" and they insist that the terminus is Oldtown, at which this complainant and his grantors are to commence to "render the river navigable;" and that the sole right of navigating said river by boats propelled by steam, from said Oldtown, so far up only as they shall "render the same navigable," is granted; and they further insist, that this exclusive right does not commence only "from and after the completion of the improvements" aforesaid; and that "to render the said river navigable from Oldtown" is to make it navigable, commencing at Oldtown and continuing therefrom up said river, when and where it was not navigable before, or at the time of the passage of said act.

And these defendants further answering deny, that this complainant or his grantors, at the time of the filing of said complaint, had "improved the navigation of the said Penobscot river "from Oldtown to Piscataquis falls, and from said falls to Five-island rips," for steamboats or any other purpose. And they further deny that this complainant, or his grantors, had "rendered said river navigable" from Oldtown up said river, over any part of the river, within the terms of said charter; and they deny that this complainant, or his grantors, had extended the period, or number of days, during which said river could be navigated by steamboats, or any other boats, from said Oldtown to Piscataquis falls, and from said falls to Five-island rips.

And these defendants say, that at the time of filing their said complaint, neither this complainant, nor his grantors, between said Oldtown and Piscataquis falls, or between said falls and Five-island rips, had erected in the bed of said Penobscot river, or upon the shore or bank thereof, any dam, or lock, or boom, or pier, or abutment, or breakwater, or any other erections, except the wooden track aforesaid, running by said falls; nor had they deepened the channel thereof, or cut down and removed the gravel and ledge bars or rocks, or other obstructions, in the bed thereof, from said Oldtown to said Piscataquis falls, and from said falls to Five-island rips. But they aver that the principal gravel and ledge-bars and rocks, and other obstructions to the navigation of said river, which have existed for the last fifty years, existed at the time of the filing of said bill of complaint; and that the channel and currents of said river, between the termini aforesaid, remained substantially, in all respects, as they have been during the period aforesaid; that between said Piscataquis falls and said Five-island rips, besides other places, there was, at the time aforesaid, a distance upon said river of about eighteen miles unbroken, upon which neither this complainant, nor his said grantors, had done any work, or expended any sum of money, or made any improvement in the navigation of said river; and that between said Piscataquis falls and Oldtown there were several places of several miles each, constituting the principal distance between the termini in said charter, upon which no labor or money had been expended by this complainant, or his grantors; and that in the places aforesaid of said river existed most of the principal gravel and ledge-bars, and rocks, and other obstructions to the navigation of said river, which have existed for the last half century, and which did exist at the time of the passage of said act.

And these defendants aver, that the aforesaid ledge and gravel bars and rocks constitute the only material impediment or obstruction to the navigation of said river, which exists now, or ever did exist, between the termini of said complainant's said charter in any state of the water in said river; and that if they were removed, as the said charter contemplates, the Penobscot river would be navigable for steamboats, and all other purposes for which it has been navigated, from Oldtown to said Piscataquis falls, and from said falls to Five-island rips, except when the same might be closed by ice.

And these defendants insist that said act requires that said grantees thereof and their associates, as a condition precedent to "render the said Penobscot river navigable" in the manner aforesaid and during the time aforesaid, and by the removal of the said obstructions, mentioned in said act, as then existing in said river between the termini of said grant, and existing in fact at the time of the passage of said act; that the water flowing in said river might be used for the purposes of navigation during that part of the droughts when said river might not be navigable in its natural state; and that, until said obstructions shall have been removed, and said river "rendered navigable" at those places where, and in those seasons when, the same was not before navigable, commencing at Oldtown, this complainant has not acquired, and will not acquire, any exclusive right to the navigation of said river for his steamboats by the terms of said act.

And these defendants deny that there were not others, besides this complainant and the grantees in said act, who deemed the Penobscot river, above Oldtown and to Five-island rips, navigable for steamboats, of the class referred to in said bill of complaint, before the passage of said act; but these defendants believe it to be true that, generally, the question had been little investigated or considered; and that they also deny that said river, between said Oldtown and Bangor, is not navigable, or that the distance is more than eight miles where there are any considerable rips or falls, or where the tide does not ebb and flow; and they deny that the State or public have been materially benefitted by the said complainant; for the river, they insist, has always been navigable the entire distance between said termini of said act before the passage of the same, except in extreme droughts and the winter season; and that, in this respect, the navigation has not been improved at the time of the filing of said complaint by this complainant and his grantors; and they deny that the complainant and his associates have made great improvements in the navigation of said river, both between Oldtown and Piscataquis falls, and between said falls and Five-island rips, as alleged in said bill of complaint; but they admit that they have blown off a piece of one ledge, before referred to in this answer, and removed some loose stone from one part to another part of said river, upon the eastern shore thereof, in a manner generally so circuitous and crooked that rafts cannot be navigated over said part of said river, and at certain points only in said river, for the accommodation of the said complainant's boats, principally upon the eastern shore thereof, without rendering any essential benefit to the navigation of said river for any purpose. And they deny that said complainant and his associates have made any new channel, or that they have made the river navigable at points where it was entirely impassable, except at a very high state of the water; or that there are months, in each season, that said river is navigable for steamboats, at which times it would be entirely impassable, had it remained without the improvements made by this complainant and his associates; or that said river is now made navigable by said complainant and his associates from Oldtown to Pis-

cataquis falls, and from said falls to Five-island rips, as is alleged in said bill of complaint.

These defendants admit that said complainant and his grantors have built two steamboats, named as described in said bill, and at an expense of perhaps ten or eleven thousand dollars, and that they have run them over the said river between the termini aforesaid; and that it may be for the time alleged in said bill of complaint; and they say that, a part of said time, they run said boats over said Piscataquis falls in their natural state. But these defendants deny that said complainant and his associates have well and faithfully performed all the conditions of said grant, or that they have made great improvements in the navigation of said river between the points named in said charter, or that they have rendered the same navigable for steamboats, safely and conveniently, for a long period in each year, during which time it would not be navigable in its natural state, as alleged in said bill of complaint; and they aver that the navigation of said river, over that part of the same covered by this complainant's charter, has been suspended a longer period this summer, in the drought, than ever before since the acquaintance of these defendants with the said river in any one year; and these defendants deny that said complainant and his associates have done and performed all which, by said charter and grant, the said grantees, and their associates and assigns, were bound to do and perform, as is alleged in said bill of complaint.

And these defendants admit that it may be that this complainant, including the expenses for his boats, purchase of real estate, and other expenses, may have expended from sixteen to twenty thousands *of* dollars; but they say that the receipts from said boats have amounted to at least sixteen thousand dollars during the same period, as they are informed and believe.

And these defendants admit that said Veazie has caused the said boat, Gov. Dana, to run from Oldtown to Piscataquis falls daily for the time alleged in said bill of complaint, and that the same was commanded during said time by the said Youngs in his employ, and that the said boat has run most of the time at or near that part of the Penobscot river upon which the said boat, Gov. Neptune, has run, and for the reasons only already set forth in this answer; but they utterly deny that, without the channel and improvements made by said complainant, for a large portion of the time, or for one single day or hour, during which said boat, Gov. Dana, has run over said route, said river would not have been navigable by said boat but for the improvements made by said complainant and his associates under and by virtue of said grant, as is alleged in said bill of complaint. But these defendants say that, fifteen days after the filing of this bill of complaint, and after the water had fallen many inches in said part of said river, to wit, on the thirteenth day of June last past, said Levi Young run said boat from Oldtown to Piscataquis falls, loaded with passengers and freight, as usual over the western channel of said river, where the boat of said complainant has never run, and without even coming upon the track

or route of said boat, Gov. Neptune, except two or three times to cross the same; and they aver that the track of said boat, Gov. Neptune, is too circuitous to enable any boat to run up said river without occasionally crossing the same at any state of the water.

And these defendants deny that the said dam, built by this complainant upon the land of said Veazie, upon the western shore at Piscataquis falls, was, or is, necessary, or served or serves any useful purpose for this said complainant's works, or in improving the navigation of said river, or in shortening the length of the line of the land conveyance by railroad round said falls; nor do they admit or believe it was erected for, or expected to serve, any such purpose by said complainant; and they further say, that the said remaining four dams, built upon the eastern shore, do not bring the said complainant's boats nearer together, nor diminish the length of said land conveyance by railroad round said falls; and they say that the depots at each end of said rail track, below and above said falls, are situated upon the navigable waters of said river, at all seasons when the same, above and below, are navigable, with or without the existence of said dams. And these defendants deny that said dams, and said complainant's other works, do not impede and obstruct the running of logs, rafts, or lumber down said river, which are usually driven or floated therein, or that they greatly facilitate the passage of the same; and they say that said western dam has already caused great numbers of rafts of boards, timber, and other manufactured lumber to be broken up, and injured, and lost, in part, to a large amount in the gross.

And said Veazie admits that said complainant gave him notice that he intended to take a given piece of his land, or had taken the same, on said western shore at said Piscataquis falls, upon which he erected his said dam; but said Veazie denies that he gave any assent to the same; and the said Youngs admit that they understood that said complainant claimed the exclusive right to the navigation of the Penobscot river by boats propelled by steam, on that part of said river which is above Oldtown to Five-island rips.

But these defendants deny that they threatened to injure or impede any of the works of said complainant upon said river, or having any connexion with the same, or the said complainant's said works, except to remove the said western dam from the land of said Veazie, and from across the main and ancient raft and boat channel of said river at said Piscataquis falls.

And these defendants deny all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to *have* dismissed

with their reasonable costs and charges in this behalf most wrongfully sustained.

SAMUEL VEAZIE,
LEVI YOUNG.

PENOBSCOT, *ss.*

October 6, 1849, this day personally appeared the above named Samuel Veazie and Levi Young, and made oath that they had carefully made themselves acquainted with the contents of said answer by them signed; that they know the contents thereof to be true of their own knowledge, except the matters therein stated on information and belief, and that as to those matters they believe them to be true.

Before me,

BENJ. PLUMMER, JR.,
Justice of the peace.

And now, at the October term, A. D. 1849, injunction renewed and continued to the next term. Time for taking testimony enlarged to May 15th, 1850.

Replication of said Moor to the answer made jointly by said Veazie, Levi Young and Warren R. Young.

This repliant, saving and reserving to himself all manner of exceptions to said answer, for replication thereunto says, that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein or hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed, by

WEBSTER KELLY,
Solicitor for complainant.

And now on the fifth day of June, 1850, the defendants file the following rule, viz:

W. B. S. MOOR
vs.
SAMUEL VEAZIE et al. } In chancery. S. J. C., June 5, 1850.

In the above case notice is hereby given that the counsel for defendants will, at the next term of said court, move to have said suit dismissed, for the reason that plaintiff has not used due diligence in the prosecution thereof, and in performing all the acts required of him;

and this rule is filed accordingly for said plaintiffs to show cause at said next term why said suit should not be dismissed accordingly.

ALBERT W. PAINE,
Counsel for defendants.

And now at the June term, A. D. 1850, the case is submitted to the court upon the following statement of facts:

PENOBSCOT, *ss.*

WYMAN B. S. MOOR
vs.
SAMUEL VEAZIE et al.
} In equity. S. J. C., June term 1850.

The following facts are agreed by the parties:

Before the passage of the act set forth in the bill the Penobscot river above Oldtown had never been navigated; between tide water at Bangor and Oldtown, a distance of eight miles, said river is crossed by four dams, and is not now nor ever was navigable; there is a railroad built from Bangor to Oldtown, which, since the filing of this bill, has been extended to the river at the steamboat landing at Oldtown; that before any improvements were made on the river the plaintiff built the steamer Governor Neptune, and run her on said river between Oldtown and Piscataquis falls, from the 27th day of May, 1847, till the 8th day of July following, when she was arrested by the drought; that in August of that year the grantees under said act commenced making improvements on said river below Piscataquis falls by removing rocks from the channel; that during this season the sum of eight hundred dollars was expended in said improvements; that on the 14th day of October, 1847, said steamer Governor Neptune recommenced her trips, and continued them until arrested by the ice; that on the 27th day of November, 1847, said steamer Governor Neptune was run over Piscataquis falls to a place called Nickatou, about fourteen miles above Five-island rips; this was done at a high pitch of water on the river; that in the spring of 1848 plaintiff built the steamer Mattanawcook; that on the first day of August she was run to Lincoln, and laid up there till certain obstructions were removed at a place called Mohawk rips, above said Piscataquis falls; that in August of that year plaintiff removed some large boulders from said rips, which rendered its passage hazardous at all times, and entirely obstructed it for steamboats at all ordinary stages of the water; that on said rips plaintiff expended during said season two hundred dollars, which was the only improvement made that summer on the river owing to the continued high state of the water; that in the winter of 1848 plaintiff expended at a place called "the Cook" two hundred and twenty-five dollars in removing a ledge, under contract with said Levi and Warren R. Young; said "Cook" is within the town of Oldtown; it is above Oldtown falls "village" and "landing;" that from the twenty-second day of August, 1848, to the second day of July, 1849, said boats were run daily over

their respective routes, except when said river was obstructed by ice; that in February and March, 1849, plaintiff built the dams described in his bill for the purpose of passing his boats down behind some islands in said Piscataquis falls, and he built a railroad from the foot of said islands to the foot of said falls, being prevented from completing his dams by ice and freshet; he extended said railroad from the foot of said islands to the head of said falls; said railroad is two miles in length; since the construction of said railroad said dams have remained without being completed; said railroad connects the steamboat route above said falls with the route below said falls, and was built before the filing of plaintiff's bill; that since the filing of said bill and granting of the injunction, plaintiff has expended in the bed of said river, in removing rocks and deepening the channel thereof between Oldtown falls and Five-island rips, between two and three thousand dollars, and has built and is now running over the route below said falls another steamboat, called the Sam Houston, and is also now running the Gov. Neptune and Mattanawcook; that plaintiff's boats were arrested by the drought on the 6th day of July, 1849, and did not recommence running until the 15th of October; that the season of 1849 was a season of long continued and unusual drought, and the previous year 1848, a remarkable one for a long continuance of high water on the river; that in periods of ordinary high water, said river was passable for boats of the peculiar construction of plaintiff's boats before any improvements were made on the river, except at Piscataquis falls and Mohawk rips; these were passable for a few days in the year only at a very high stage of the water; the removal of a few large boulders in Mohawk rips, and the digging down of some rock bars, has rendered Mohawk rips navigable now when the other sections of the river are navigable; Piscataquis falls can never be made passable with safety, except in a high freshet, without a large expenditure; that the improvements on the "Cook" were made to widen and straighten the channel, and render it passable at a very high stage of the water when it otherwise would not be passable; that the improvements of plaintiff have been chiefly confined to removing rocks and deepening a channel in the river; which channel at some places follows the raft channel, and at other places leaves the raft channel; that the channel improved by plaintiff is at places narrow and crooked, and would not admit of two boats passing each other going in opposite directions; that since the improvements have been made the plaintiff's boats can run on the river with two and a half feet less water than was necessary before they were made; that said river is subject to high freshets in the spring, which soon subside, and the water falls to a moderate pitch early in the season; the Penobscot river takes its rise and has its whole course in the State of Maine; the draught of plaintiff's boats is from twelve to fifteen inches when light, and about two feet when loaded; that plaintiff is assignee of said charter property and privileges under it, as set forth in the bill; that said steamer Gov. Dana was built by said Veazie, and run by said Levi Young and

Warren R. Young, between Oldtown and Piscataquis falls, from the 10th day of May, A. D. 1849, to the granting of the injunction.

The city of Bangor is a port of entry, situate at the head of the tide on Penobscot river; and the steamer Gov. Dana was of the burden of forty-six tons, custom-house measurement, and was enrolled and licensed for the coasting trade at said port of Bangor; the Penobscot tribe of Indians own all the islands in the Penobscot river above Oldtown falls, some of which they occupy; said tribe of Indians always have been and now are under the jurisdiction and guardianship of this State; the act of incorporation set forth in the bill is made a part of the case.

The foregoing facts are sufficiently alleged in the bill and answer, and abstracts of the same are waived by agreement of the parties.

WYMAN B. S. MOOR,
ALBERT W. PAINE,
Counsel for defendants.

Upon which statement of facts the cause was argued at said June term, A. D. 1850, and all and singular the premises being seen, and by the court fully understood, and mature advisement thereon had, the court order and decree that the said Samuel Veazie, Warren R. Young, and Levi Young, be perpetually enjoined to desist and refrain from running and employing said steamboat Governor Dana, propelled by steam, for transporting passengers or merchandise on said river, or any part thereof above said Oldtown; and also from building, using, and employing any other boat propelled by steam on that part of said river for that purpose, without the consent of the said Wyman B. S. Moor, obtained according to law, until said Moor's interest and exclusive right shall terminate and expire.

And now William G. Crosby, esquire, of Belfast, in the county of Waldo, is appointed master to estimate the damages claimed by the said plaintiff against the said defendants, as set forth in his bill; the said action was thence continued to this term, and the death of Warren R. Young, one of the defendants, is suggested to the court; and now William G. Crosby, master, appointed to estimate damages, makes return of the commission to him directed, and of his doings therein as follows, viz:

STATE OF MAINE, *Penobscot, ss.*

To William G. Crosby, of Belfast, esquire.

At the supreme judicial court, begun and holden at Bangor, within and for the county of Penobscot, on the fourth Tuesday of October, (being the twenty-second day of said month,) anno domini 1850.

WYMAN B. S. MOOR
vs.
SAMUEL VEAZIE et als. } In equity.

Ordered by the court, that Wm. G. Crosby be appointed to estimate

the damages claimed by the said plaintiff in equity against the said defendants, as set forth in his bill; and you are hereby appointed for the purposes aforesaid, first giving due notice to both parties previous to making said estimates; and you are required to return said estimates to this court as soon as may be.

[L. S.] Attest: WILLIAM T. HILLIARD, *Clerk.*

WYMAN B. S. MOOR
vs.
SAMUEL VEAZIE, Levi Young, and Warren R. Young. } In chancery.

The undersigned appointed by this honorable court, as appears by their order hereunto annexed, to estimate the damages claimed by said plaintiff against said defendants, as set forth in his bill, having notified the parties, met them at Bangor on the 17th of June, A. D. 1850, and having heard their several proofs and arguments, and examined the vouchers produced, reports:

Account.

That he took an account as prayed for in the bill of all sums of money which had come to the hands of said defendants, as the price or consideration of transporting passengers or merchandise in derogation of plaintiff's rights, as set forth in said bill, and found the same to be the sum of seven hundred and eighty dollars and five cents, as appears by the schedule hereunto annexed and marked "one."

Diversion of freight, &c.

The undersigned further reports that plaintiff presented for investigation and adjudication the claims set forth in the schedule hereunto annexed and marked "two;" and that upon a hearing of the parties and the proofs relating thereto, he estimates the damages claimed by plaintiff in item 1, in said schedule, viz., "damages occasioned by the diversion of travel and freight from his line, and by diminishing the business of plaintiff's boats," to be the sum of fifteen hundred dollars; said estimate includes the above named sum of seven hundred and eighty dollars and five cents, the same having been received by defendants for "travel and freight diverted from plaintiff's line."

Dams and railroads.

The undersigned, by consent of parties, reports the following as the facts upon which plaintiff relies to maintain the claim set forth in item 2 of his schedule aforesaid, and refers to the court the question of the legality of said claim; said claim being "for extra costs and expenses in building railroad and for cost of dams."

In December, 1848, plaintiff learned that defendants were making arrangements to construct and put in operation a steamboat to run upon

the route on which one or both of his boats had been running, which boat was in the month of May following so put upon the route. Plaintiff thereupon consulted with eminent legal counsel as to the course which he should pursue to protect the rights which he claimed under the act of the legislature set forth in his bill, and was advised that his remedy against defendants, should they interfere with his rights by putting their boat upon the route, must be by application to this court by a bill in equity; but that he could not, with safety and with the assurance of a successful result, institute legal proceedings until he had built, in the language of the act aforesaid, "a canal and lock round said (Piscataquis) falls, or a railroad to connect the route above with the route below said falls."

Acting upon this advice, plaintiff commenced building the lower mile of his railroad, the whole length as subsequently completed being two miles. The route of the lower mile lay through cleared land; that of the upper mile through the forest, the deep snows and thick undergrowth in which rendered the construction of a railroad at that season of the year impracticable, except at very great expense. Such being the state of things, plaintiff employed Samuel Kendall, an experienced dam builder, to make an exploration for the purpose of ascertaining whether it was feasible and expedient to construct dams by which the water might be diverted from the channel of the river and turned into a new channel or canal to connect with the upper terminus of the lower mile of railroad, and to be substituted for the proposed upper mile of said road. Mr. Kendall went on in the month of February, 1849, and after making the necessary examination, and collecting such information as he could from persons acquainted with the river, advised plaintiff that dams could be constructed which would effect the object proposed, and recommended their construction in preference to a railroad on the upper mile, although he considered the time rather short to complete the job before the spring freshets, and so stated to plaintiff.

Acting upon that recommendation, plaintiff on the first of March commenced the construction of his dams, and continued until compelled to abandon by the breaking up of the ice and the obstruction occasioned by the increased quantity of water in that part of the river where he was then operating. The dams, so far as erected, did not divert sufficient water into the new channel or canal to render it navigable, and so failed to answer the purpose of their erection, and are now of no value to plaintiff beyond the value of the materials in their present condition.

Plaintiff having abandoned the construction of the dams as above stated, commenced building the upper mile of railroad, and completed it so that the cars ran over the whole distance from the lower to the upper terminus on the 29th day of May, 1849.

The cost and expense of building said road over and above what it would have cost if built any time in the spring or summer, after the first of May, the undersigned estimates at the sum of three hundred and thirty-three dollars, to which sum should be added interest from May 29, 1849, which sum and interest the undersigned estimates to be

the damages to which plaintiff is entitled "for extra costs and expenses in building railroad," if the court should be of opinion that he has any legal and valid claim therefor.

Counsel fees.

The undersigned, by consent of parties, reports the following as the facts upon which plaintiff relies to maintain the claims set forth in item 3 of his schedule of claims, and refers to the court the question of the legality of the same; said claim being "for cash paid for counsel."

Plaintiff paid to different individuals of the legal profession, for counsel and professional services prior to the filing of this bill and during its progress, the sum of four hundred and twelve dollars and ninety cents, no portion of which is taxable in his bill of costs.

Expenses of plaintiff.

The undersigned, by consent of parties, reports the following as the facts upon which plaintiff relies to maintain the claim set forth in item 4 of his schedule of claims, and refers to the court the question of the legality of the same; said claim being for the "personal expenses and services of plaintiff while making improvements in Piscataquis falls, and preparing bill in equity."

A bill of the particulars which make up said item is hereunto annexed, marked "Schedule three."

In January and May, 1849, plaintiff went to Portland and Boston, for the two-fold purpose of consulting with Judge Whitman in relation to the subject matter of this bill, and raising money to enable him to construct his canal and railroad. His travelling expenses in making these journeys amounted to eighty-nine dollars and fifty-four cents. He also paid for telegraphic despatches to and from Judge Whitman, in February, 1849, relating to the subject matter, the sum of ninety-one cents.

In February (27,) 1849, he went to Piscataquis falls with the engineer, for the purpose of making the necessary survey and examination before commencing the construction of his canal; his personal expenses on that journey amounted to three dollars.

In February, 1849, he made two journeys to Frankfort for the purpose of purchasing that parcel of land on the west bank of the river, to which he subsequently attached one of his dams; his personal expenses on these journeys amounted to eight dollars.

April 30, 1849, he made a journey to Oldtown on business connected with his canal and railroad; his personal expenses on that journey amounted to six dollars.

May 29, 1849, he went to Farmington for the purpose of applying to this court for an injunction in this case; his personal expenses in going and returning amounted to the sum of twenty-five dollars.

He subsequently went to Norridgewock for the purpose of a hearing

before this court upon that application; his personal expenses in going and returning amounted to the sum of twenty dollars.

The foregoing constitute the first nine charges in the bill of particulars referred to, and so far as in the opinion of the court plaintiff may have a legal and valid claim therefor, the undersigned estimates his damages at the sums above stated.

Plaintiff claims for his "services as counsel," as appears by the tenth charge in said bill of particulars. In the preparation of his cause for trial, and in the conduct of the same in its various stages, plaintiff rendered the same assistance which is usually rendered by the party to a suit who is himself a counsellor at law; in the preliminary proceedings he advised with counsel learned in the law, and they were associated with him in the management of the cause to its termination; the moneys paid to them for their counsel and aid are included in one of the items of claims heretofore reported upon. If, in the opinion of the court, plaintiff is entitled to compensation for his services as counsel, the undersigned estimates the sum to which he is entitled to be one hundred dollars.

Plaintiff claims compensation for his "time from Jan. 1 to July, 49," as appears by the eleventh charge in said bill of particulars. During that period he was occupied a large portion of his time in the supervision of the dams and railroad then in process of construction, and in preparing this cause for a hearing before the court. What portion of the time was devoted to one, and what to the other, does not appear. If the court should be of opinion that this claim is legal and valid, in the estimation of the undersigned, the sum claimed by plaintiff, to wit, six hundred dollars, is no more than a fair value of his time from the 1st of January to the 1st of July.

Moneys paid Moor et al.

The undersigned, by consent of parties, reports the following as the facts upon which plaintiff relies to maintain the claim set forth in item 5, of his schedule of claims, and refers to the court the question of the legality of the same; said claim being for "cash paid D. Moor, jr., and Samuel Kendall, for services."

D. Moor, jr., the brother of plaintiff, and who had been over the route upon which plaintiff's boats run before any improvements had been made by plaintiff, or those under whom he claims, was employed by plaintiff to go over and re-examine the route, for the purpose of collecting such information as would enable him to testify, at the hearing of the cause before this court, to what extent improvements had been made upon the route, and the facilities of transportation by water increased thereby. For his services plaintiff paid him the sum of forty-five dollars.

Samuel Kendall, the same who was engaged in the construction of the dams, and recommended their construction, as before stated, was employed by plaintiff to go up the river to the falls for the purpose of

making such an examination as would enable him to testify, at the final hearing of this cause upon the matter of the injunction, that no alterations had been made, or obstructions in the river created, after the completion of the work upon the dams. For his services plaintiff paid him the sum of twenty-one dollars.

The above sums, amounting to sixty-six dollars, with interest thereon from the 28th day of June, A. D. 1849, the undersigned estimates to be the damages to which plaintiff is entitled under this item of claim, if in the opinion of the court said claim is legal and valid.

WM. G. CROSBY.

Schedule "One."

Account of moneys received by Samuel Veazie, Levi Young, and Warren R. Young, for transportation of passengers and merchandise.

Amount of receipts from May 15, 1849, to May 29, 1849, inclusive	$278 76
Amount of receipts from May 29 to June 28, 1849, inclusive	501 29
	$780 05

NOTE.—The first of the above items represents the amount received, as above, from the time when defendants' boat commenced running (May 15) to the filing of plaintiff's bill, (May 29.) The second item represents the amount received, as above, from the filing of the bill (May 29) to the time when defendants' boat ceased running, in obedience to the injunction, (June 29.)

Schedule "Two."

Specification of plaintiff's claims.

1. Plaintiff claims damage occasioned by the diversion of travel and freight from his line, and by diminishing the business of plaintiff's boats	$3,000 00
2. Plaintiff claims allowance for extra costs and expenses in building railroad, and for cost of dams; which expense was necessary to protect plaintiff's rights and property from the interference of defendants	2,500 00
3. Plaintiff claims for cash paid for counsel	500 00
4. Plaintiff claims for his own time, expenses, and services in protecting his rights and property against the acts of defendants, and in prosecuting this suit	1,052 45
5. Plaintiff claims for cash paid D. Moor, jr., and Samuel Kendall, for services in same matter	100 00
Total	$7,152 45

Schedule "Three."

Personal expenses and services of W. B. S. Moor, while making improvements on Piscataquis falls and preparing bill in equity.

1849.			
January	1.	1. Expenses of journey to Boston and to consult Judge Whitman - - - -	39 64
	29.	2. Expenses to Portland and Boston to consult Judge Whitman, &c. - -	29 40
Feb'y	13.	3. Expense of 3 telegraphic despatches to Judge Whitman - - -	0 91
	27.	4. Personal expenses going to Piscataquis falls - - - - -	3 00
		5. Expenses twice to Frankfort - -	8 00
April	30.	6. Expenses to Oldtown - - -	6 00
May	9.	7. Expenses to Boston to raise money and consult Judge Whitman - -	20 50
	29.	8. Expenses of journey to Farmington and back to apply for injunction - -	25 00
		9. Expenses of journey to Norridgewock and back for hearing - - -	20 00
		10. My services as counsel - - -	300 00
		11. My time from January 1 to July 1, 1849	600 00
			$1,052 45

Whereupon, after argument, the court order and decree, that the sum of fifteen hundred dollars be allowed as the damages to be paid by said Veazie and Young to said Moor.

And now said Samuel Veazie and Levi Young, defendants in the above entitled action, come and say, that in the record and proceedings in said suit had in said court, being the highest court of law and equity in the State of Maine in which a decision in said suit could be had, and in the judgment and decree rendered in said case, being the final judgment and decree therein, manifest error exists as follows, viz:

1. In this, that the statute or act of incorporation recited and set forth in the plaintiff's bill, being an act passed by the legislature of said State, and approved July 13, 1846, entitled "An act to promote the improvement of Penobscot river," is repugnant to the Constitution of the United States.

2. There is also error in this, that in the record and proceedings, judgment, and decree of the court in said case, it appears that the validity of a certain statute or act of incorporation, passed by the legislature of Maine, and approved July 13, 1846, and entitled "an act to promote the improvement of Penobscot river," being the same recited and set forth in the plaintiff's bill aforesaid, was drawn in question on the ground of its being repugnant to the Constitution and laws of the

United States; and the decision, judgment, and decree of said court, rendered as aforesaid, was in favor of the validity of said statute or act of incorporation; whereas the said defendants allege and say, that notwithstanding the said judgment, decision, and decree of said court, said statute or act of incorporation is repugnant to the Constitution and laws of the United States, and therefore void; wherefore in that there is manifest error.

3. There is error in this, that the judgment and decree of said court in said case, being the final judgment and decree therein, was given for said Moor, and against said Veazie and other defendants; whereas judgment should have been given in favor of said Veazie and other defendants against said Moor.

Wherefore said defendants pray that the judgment and decree aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that *they* said defendants may be restored to all things which they have lost by occasion of said judgment and decree. And to this end the said defendants claim an appeal from the judgment and decree aforesaid, rendered in and by this honorable court, to the Supreme Court of the United States, as provided in and by the laws of the United States in such cases, and pray that said appeal may be allowed, so that by proper process the said proceedings and record may be submitted for the correction of said errors, and the recovery of said defendant's rights, to the honorable Supreme Court of the United States as aforesaid.

By ALBERT W. PAINE,
Attorney for defendants.

Whereupon the court order that the said Samuel Veazie and Levi Young file a bond, with sufficient sureties, in the sum of five thousand dollars, to prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make their plea good. And said bond having been filed, and by the court approved, all further proceedings in this cause in this court are stayed.

Attest: WM. T. HILLIARD,
Clerk.

STATE OF MAINE,
Penobscot, ss.

Clerk's office, supreme judicial court, October 31st, A. D. 1851.
A true copy of the record.

[SEAL.] Attest: WM. T. HILLIARD,
Clerk.

The United States of America, to Wyman B. S. Moor, of Bangor, in the county of Penobscot, and State of Maine, a citizen of said State of Maine, greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme judicial court, for said State of Maine, at Bangor, in and for said county of Penobscot, wherein Samuel Veazie, of Bangor, and Levi Young, of Oldtown, both in said county, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Ether Shepley, chief justice of the said supreme judicial court, this second day of July, in the year of our Lord one thousand eight hundred and fifty-one.

ETHER SHEPLEY.

On this day of , in the year of our Lord one thousand eight hundred and , personally appeared before me, the subscriber, and makes oath that he delivered a true copy of the within citation to .

DISTRICT OF MAINE, *ss.*

July 16, 1851.

On this sixteenth day of July, in the year of our Lord one thousand eight hundred and fifty-one, I served the foregoing citation upon the within named Wyman B. S. Moor, by giving him in hand an attested copy thereof.

WILLIAM PAINE,
U. S. marshal.

Fees—Service $0 50
Copy 50

$1 00 Paid by A. W. Paine, esq.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the justices of the [SEAL.] supreme judicial court of the State of Maine, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court, for the State of Maine aforesaid, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between Wyman B. S. Moor, of Bangor, in said State of Maine, who is plaintiff therein, and Samuel Veazie, of said Bangor, and Levi Young, of Oldtown, in said State, who are defendants therein, which suit is a bill in equity, wherein the said Moor complains against said Veazie and Young, as in and by said bill is fully set forth and appears; wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under,

said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Samuel Veazie and Levi Young, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this second of September, in the year of our Lord one thousand eight hundred and fifty-one.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by ETHER SHEPLEY,
Chief justice of the supreme judicial court of Maine.

STATE OF MAINE, *ss.*

Sept. 30, 1851. Pursuant to the within writ, I do hereby, under the seal of our court, distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning the same, together with this writ, to the Supreme Court of the United States at Washington, to be holden at the time within mentioned.

ETHER SHEPLEY,
Chief justice of the supreme judicial court of Maine.